

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELNORA CARTHAN, *et al.*,

Case No: 5:16-cv-10444

Plaintiffs,

Hon. Judith E. Levy

v

Mag. Mona K. Majzoub

GOVERNOR RICK SNYDER, *et al.*,

Defendants.

**MDEQ DEFENDANTS' JOINDER AND CONCURRENCE IN MOTION
FOR STAY OF DISCOVERY**

Defendants Stephen Busch, Liane Shekter Smith, Michael Prysby, Patrick Cook, Daniel Wyant, and Bradley Wurfel (“MDEQ Defendants”) hereby join in the State Defendants’ Motion for Stay of Discovery (Dkt. No. 685). Most¹ of the MDEQ Defendants previously filed a Motion for Stay (Dkt. No. 604) that in part argued that discovery should not—and could not—proceed until the fundamental, threshold issue of these Defendants’ entitlement to qualified immunity from Plaintiffs’ federal claims was decided by this Court and any appellate courts to which an appeal of the issue of qualified immunity is filed. While this Court denied the previous Motion for Stay in its November 9, 2018 Order (Dkt. No. 670), the

¹ All claims against Daniel Wyant were dismissed by this Court’s August 1, 2018 Order, so he did not file a motion for stay prior to this Court’s November 9, 2018 Order. Daniel Wyant has since filed a notice of appeal from this Court’s November 9, 2018 Order (Dkt. No. 692), which divests this Court of jurisdiction and otherwise warrants a stay of discovery, as outlined herein.

fact remains that these Defendants' entitlement to qualified immunity has not been decided and discovery therefore cannot commence.²

Similar to State Defendants, most of the MDEQ Defendants have filed Amended Notices of Appeal that divest this Court of jurisdiction over this case. (Dkt. Nos. 679, 682). This alone warrants a stay of proceedings. Moreover, as set forth in State Defendants' Motion for Stay, if this Court permits discovery to proceed prior to a qualified immunity determination, despite a request for stay from Defendants asserting qualified immunity, any order denying such a stay is itself appealable to the Sixth Circuit. *Skousen v. Brighton High School*, 305 F.3d 520 (6th Cir. 2002); *Smith v. Leis*, 407 Fed. Appx. 918 (6th Cir. 2011); *Everson v. Leis*, 556 F.3d 484 (6th Cir. 2009). In light of this Court's recent Order of November 9, 2018, requiring the parties to create a comprehensive case management plan, including discovery deadlines, MDEQ Defendants renew their Motion for Stay by joining in State Defendants' Motion for Stay. The creation of a comprehensive case management plan in and of itself constitutes litigation proceedings these Defendants would not have to participate in if entitled to qualified immunity, and they should not be required to participate in such proceedings now. Also inappropriate are any discovery deadlines proposed in that

² It should also be noted that these Defendants' motions to dismiss in this case remain pending.

plan requiring discovery from MDEQ Defendants or participation in discovery by MDEQ Defendants (fact witness depositions, third party discovery, etc.) prior to a determination of MDEQ Defendants' asserted qualified immunity.

WHEREFORE, MDEQ Defendants join in State Defendants' Motion for Stay of Discovery and respectfully request that this Court stay all discovery and related proceedings until a determination of these Defendants' qualified immunity from Plaintiffs' claims has been issued by this Court and/or the appropriate appellate courts.

Dated: December 4, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2018, I directed Wendy Paul to electronically file the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of record.

Dated: December 4, 2018

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